IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION No. 437 OF 2005

Auchtel Products Limited Petitioner

Vs.

Apcotex Industries Respondent

Mr. R. B. Jaiswal i/b C.D. Patel for petitioner.

Mr. Vatsal Shah i/b C. N. Mehta for respondent.

CORAM : S. C. DHARMADHIKARI, J.

DATE : MARCH 16, 2006.

P.C. :-

. The petition for winding up is presented by the petitioners, who have supplied goods between August to December, 2003 to the respondent Company.

2. The learned advocate appearing for the petitioner states that having accepted the goods and utilised them, the respondent was obliged to pay the amount under the invoices, raised from time to time. Although, the Company raised in the correspondence, the issue of quality of the goods, the learned advocate appearing for the petitioner invites my attention to a letter dated 19th May, 2004, copy of which is annexed as Annexture B, to this petition.

3. In his submission the notice which preceded this petition invited the attention of the Company to its own letter and all that the petitioner sought was payment of undisputed amount of Rs. 8,44,000/-.

4. The letter was received and in reply to this letter, the company's advocate has replied in the following terms-

> " With reference to para no.5 of your notice, my clinents deny the allegation, that a sum of Rs.8,43,856/- is due and payable by my clients to your clients in respect of supply of products. That my clients have repeatedly reminded and requested your clients to take back the Logata and also reimburse the loss incurred by my clients as a result of using Exponent material, but the intention of your clients, since inception was bad and dishonest, therefore they did not lift the said inferior material, i.e. Logata."

5. The learned advocate appearing for the petitioner invited my attention to the averments in the petition and more particularly paragraph 16 thereof and prayed that the petition be admitted and appropriate orders be passed in accordance with law.

6. The learned advocate Mr. Shah, appearing for respondent invited my attention to the statements in affidavit filed in reply to this petition. He

submits that it is not as if the is dispute raised for the sake of not making payment of any legitimate dues but the correspondence, copies of which is annexed to the reply to demonstrates that the company's letter dated 19th May 2004 and the last paragraph therein should not be read in isolation. He states that dispute is bona fide in as much as once the quality of goods is not as per the requirement of the company and a claim is raised, it does not mean that the company avoids making payment. He invites my attention to the other submissions in the reply, namely that the company's financial position is sound and it provides employment to about 107 employees and there is no case for winding up.

7. After having perused the petition and the annextures thereto, and also reply and rejoinder affidavit, to my mind, it is absolutely clear that in the statutory notice, the petitioner has called upon the respondent company to pay a sum of Rs.8.45 lacs , which is agreed to be paid with the letter dated 19th May, 2004. The reply to that advocate's letter is reproduced by me above. The correspondence which is annexed to the affidavit and reply is prior to the letter of 19th May 2004. In the letter of 19th May,

2004 the company states as under -

> "In view of the above we have decided to recover 50% of the loss incurred by us amounting to Rs. 22.83 lacs (Rupees Twenty Two Lacs Eighty Three Thousand only) and we are in the process of issuing a debit note for the similar amount.
>
> Hence, you are therefore, requested to make the payment of Rs. 14.39 lacs (Rupees fourteen Lacs Thirty Nine Thousand Only), being the net balance after adjusting the amount payable to you on account of supply of material amounting to Rs.8.44 lacs (Rupees Eight Lacs Forty Four Thousand only)."

8. Admittedly, after this letter, no proceedings have been initiated for recovery of alleged loss. Even after reply of the statutory notice, no proceedings are initiated by the Company. Therefore, if not as if the petitioner is making a inflated claim, but it is only making a claim in so far as payment of Rs. 8.44 Lacs and as far its other claims, they not having been mentioned in the statutory notice, nor pressed during the course of

argument, considering the affidavit in reply and the statement of Mr. Shah about solvency of the company, in my view the following order would meet the ends of justice.

a) On the respondent depositing the amount of Rs.8.44 Lacs within a period of eight weeks from today in this Court, Company Petition stands dismissed with liberty to the petitioner to file Civil Suit for its claim, on account of the invoices in question. The deposit of the amount shall abide by such orders, as are passed by the Civil Court. Civil suit be filed within a period of six weeks from the date of such deposit, and the petitioner is at liberty to apply for appropriate interlocutory orders therein. In case no such suit is filed or if filed no application for interlocutory reliefs made within a period of two weeks of its institution, Registry is directed to refund the amount of Rs.8.44 Lacs to the respondent company.

b. In case a Civil Suit is filed as above, it would be open for the respondent to dispute the claim, and in addition file a counter claim of its own. All such aspects would be decided by the Civil Court on

their own merits and in accordance with law uninfluenced by any observation made in the company petition.

c. Needless to say that if the amount is not deposited as above, the Company Petition stands admitted and thereupon the petitioner to take steps, as are provided in law for its advertisement.

(S. C. DHARMADHIKARI,J.)